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3 **BEFORE THE FEDERAL ELECTION COMMISSION**

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4 In the Matter of)
5 MUR 6972) DISMISSAL AND
6 Jerry Moran) CASE CLOSURE UNDER THE
7 Moran for Kansas) ENFORCEMENT PRIORITY
8 and Timothy Gottschalk, as treasurer) SYSTEM
9

10 **GENERAL COUNSEL'S REPORT**

11 Under the Enforcement Priority System, the Commission uses formal scoring criteria as a
12 basis to allocate its resources and decide which matters to pursue. These criteria include, without
13 limitation, an assessment of the following factors: (1) the gravity of the alleged violation, taking into
14 account both the type of activity and the amount in violation; (2) the apparent impact the alleged
15 violation may have had on the electoral process; (3) the complexity of the legal issues raised in the
16 matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as
17 amended (the "Act"), and developments of the law. It is the Commission's policy that pursuing
18 relatively low-rated matters on the Enforcement docket warrants the exercise of its prosecutorial
19 discretion to dismiss cases under certain circumstances. The Office of General Counsel has scored
20 MUR 6972 as a low-rated matter and has determined that it should not be referred to the Alternative
21 Dispute Resolution Office.¹

22 The Office of General Counsel recommends that the Commission exercise its prosecutorial
23 discretion and dismiss the allegation that Jerry Moran,² Moran for Kansas, and Timothy Gottschalk
24 in his official capacity as treasurer (collectively the "Committee") violated the Act by failing to

¹ The EPS rating information is as follows: Complaint filed: October 19, 2015. Supplement to
Complaint filed: November 9, 2015. Response from Moran for Kansas filed: November 9, 2015.

² Moran is a Senator from Kansas, and he is a candidate for reelection in 2016.

1 disclose disbursements. Specifically, the complaint alleges that the Committee failed to include its
2 Schedule B, report of itemized disbursements, along with its 2015 July Quarterly report, filed on July
3 14, 2015.³

4 The Committee responds that it timely filed its 2015 July Quarterly report, including its
5 Schedule B report of disbursements.⁴ However, the Committee maintains that after it received notice
6 of the Complaint, it discovered that only 201 of the report's 409 pages were included in the version
7 of the disclosure report on the Commission's website.⁵ The Committee states that it immediately
8 contacted the Commission's Reports Analysis Division ("RAD") to determine why a portion of its
9 report was omitted from the Commission's database.⁶ The Committee avers that RAD instructed the
10 Committee to file the missing pages with the Secretary of the Senate, along with the summary pages.
11 The Committee also contends that it was instructed that the missing pages would be treated as an
12 original filing rather than an amended filing.⁷ The Committee believed that this new submission
13 would resolve the alleged reporting violation.⁸ The Committee states that on October 16, 2015, it
14 submitted the missing pages to the Secretary of the Senate.⁹ The Committee states that it still does

³ Compl. at 1 (Oct. 19, 2015). The Complainant states that the Committee failed to file its report of expenditures. However, the complaint specifically refers to a Schedule B, which is the report of disbursements, and cites to the statute and regulations requiring reports of disbursements. Further, the information missing from the report in question was the Committee's report of disbursements.

⁴ Resp. at 1 (Nov. 9, 2015).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 1-2.

⁹ *Id.* at 2.

1 not know why the missing pages were not uploaded with the first filing of the report.¹⁰

2 The Act and the Commission's regulations require each treasurer of a political committee to
3 file reports of receipts and disbursements.¹¹ It is not clear as to why the initial filing, which was
4 transferred by the Senate, did not include the Committee's full report. However, after the Committee
5 learned of the missing information, it immediately worked with RAD to file its
6 Schedule B.¹²

7 Therefore, in furtherance of the Commission's priorities, relative to other matters pending on
8 the Enforcement docket, and in light of the Committee's corrective actions, the Office of General
9 Counsel believes that the Commission should exercise its prosecutorial discretion and dismiss this
10 matter.¹³

11 **RECOMMENDATIONS**

- 12
13 1. Dismiss the allegation that Jerry Moran, Moran for Kansas and Timothy Gottschalk in his
14 official capacity as treasurer violated 52 U.S.C. § 30104(a) and (b); 11 C.F.R. §§ 104.1
15 and 104.3(b).
16
17 2. Approve the Factual and Legal Analysis;
18
19 3. Approve the appropriate letters; and
20
21 4. Close the file.

¹⁰ *Id.*

¹¹ 52 U.S.C. § 30104(a) and (b); 11 C.F.R. §§ 104.1, 104.3(a) and (b).

¹² The Committee also sent the missing information to the Complainant, who contacted the Commission on November 12, 2015, to let us know that the Committee had provided the missing information. Compl. Supp. (Nov. 12, 2015).

¹³ *Heckler v. Chaney*, 470 U.S. 821 (1985).


Lisa J. Stevenson
Acting General Counsel


Kathleen M. Guith
Acting Associate General Counsel
for Enforcement


BY:

10.31.16

Date


Stephen Gura
Deputy Associate General Counsel
for Enforcement


Jeff S. Jordan
Assistant General Counsel
Complaints Examination
& Legal Administration


Wanda D. Brown
Attorney

Attachment:
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Jerry Moran MUR 6972
Moran for Kansas
and Timothy Gottschalk, as treasurer

I. INTRODUCTION

This matter was generated by a Complaint filed by Debbie Nuss ("Complainant") on October 19, 2015, alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act") and Commission regulations by Jerry Moran, Moran for Kansas, and Timothy Gottschalk in his official capacity as treasurer (collectively the "Committee"). It was scored as a relatively low-rated matter under the Enforcement Priority System, a system by which the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue.

II. FACTUAL AND LEGAL ANALYSIS

The Complainant alleges that the Committee violated the Act when it failed to disclose disbursements. Specifically, the complaint alleges that the Committee failed to include its Schedule B, report of disbursements, along with its 2015 July Quarterly report, filed on July 14, 2015.¹

The Committee responds that it timely filed its 2015 July Quarterly report, including its Schedule B report of itemized disbursements.² However, the Committee maintains that after it received notice of the Complaint, it discovered that only 201 of the report's 409 pages were

¹ Compl. at 1 (Oct. 19, 2015). The Complainant states that the Committee failed to file its report of expenditures. However, the complaint specifically refers to a Schedule B, which is the report of disbursements, and cites to the statute and regulations requiring reports of disbursements. Further, the information missing from the report in question was the Committee's report of disbursements.

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3 determine why a portion of its report was omitted from the Commission's database.⁴ The
4 Committee avers that RAD instructed the Committee to file the missing pages with the Secretary
5 of the Senate, along with the summary pages. The Committee also contends that it was
6 instructed that the missing pages would be treated as an original filing rather than an amended
7 filing.⁵ The Committee believed that this new submission would resolve the alleged reporting
8 violation.⁶ The Committee states that on October 16, 2015, it submitted the missing pages to the
9 Secretary of the Senate.⁷ The Committee states that it still does not know why the missing pages
10 were not uploaded with the first filing of the report.⁸

11 The Act and the Commission's regulations require each treasurer of a political committee
12 to file reports of receipts and disbursements.⁹ It is not clear as to why the initial filing, which was
13 transferred by the Senate, did not include the Committee's full report. However, after the
14 Committee learned of the missing information, it immediately worked with RAD to file its
15 Schedule B.¹⁰

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 1-2.

⁷ *Id.* at 2.

⁸ *Id.*

⁹ 52 U.S.C. § 30104(a) and (b); 11 C.F.R. §§ 104.1, 104.3(a) and (b).

¹⁰ The Committee also sent the missing information to the Complainant, who contacted the Commission on November 12, 2015, to let us know that the Committee had provided the missing information. Compl. Supp. (Nov. 12, 2015).

1 Therefore, in furtherance of the Commission's priorities, relative to other matters pending
2 on the Enforcement docket, and in light of the Committee's corrective actions, the Commission
3 exercised its prosecutorial discretion and dismissed this matter.¹¹

¹¹ *Heckler v. Chaney*, 470 U.S. 821 (1985).

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